BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
ALBION W. AND VIRGINIA B. SPEAR)

Appearances:

For Appellants: Glenn B. Martlneau, Attorney at Law

For Respondent: Burl D. Lack, Chief Counsel;
Israel Rogers, Assistant Counsel

O P I N I O N

This appeal is made pursuant to section 19059 of the Revenue and Taxation Code from the action of the Franchise Tax Board In denying the claims of Albion W. and Virginia B. Spear for refund of personal Income tax in the amounts of $212.75, $322.15, $336.49 and $282.10 plus interest paid by appellants In the amounts of $68.72, $84.72, $68.31 and $40.34, for the years 1955 through 1958, respectively.

In 1941 appellants bought a ranch southeast of Santa Ana, together with 100 head of cattle which were on It. They hired a stockman, who lived on the ranch. In 1946 they purchased additional land, increasing their holdings to 400 acres. They also had government grazing permits for 680 acres. It has not been established how many cattle were kept on the ranch at the times in question, but there were enough for appellants to make small sales and to influence them to buy a pedigreed bull. Forty acres were planted in feed crops. The ranch also produced and sold chickens and eggs.

Mr. Spear was an active businessman with Interests in several different businesses. He had no experience in ranching and devoted little of his time to it. The ranch was modestly equipped and had no living quarters for the appellants, who only visited it to supervise and confer with their stockman. The ranch was profitable in the earlier years but from 1952 to 1958 expenses exceeded receipts as follows:

	Receipts	Expenses	Loss
1952	$ 2,874.69	$ 9,578.68	$ 6,703.99
1953	2,938.59	10,463.86	7,525.27
1954	2,109.13	10, 956.85	8,847.72
1955	1,235.12	9,587.67	3,352.55
1956	3,451.70	12,227.68	8,775 .98
1957	546.36	13,896.72	13,350.36
1958	1,965.00	12,385.00	10,420.00
	$15,120.59	$79,096.46	$63,975.87

In 1959 appellants sold the ranch for the stated reason that they finally concluded that the climate was becoming dryer and without the greater rainfall of the earlier years the ranch could not support a successful cattle operation. The following is a table from the taxpayers' records showing the pattern of rainfall:

1926-1941	12% above normal
1931-1941	25% above normal
1940-1941	118% above normal
1941-1942	25% below normal
1941-1957	15% below normal

The federal government disallowed 50 percent of the expenses attributed to the ranch for 1957 and 1958. The record does not show which expenses were disallowed or the Grounds of disallowance. Such an action would be consonant with a. finding that those expenses were personal in nature rather than ordinary and necessary ranching expenses. The record does note that the appellants treated as part of the ranch equipment a station wagon purchased In 1957 and a Cadillac automobile purchased in 1958. Appellants did not contest the federal adjustment.

Upon learning of the federal action, the Franchise Tax Board disallowed 50 percent of the expenses claimed not *only* for 1957 and 1958, but also for 1955 and 1956.

Under section 18451 of the Revenue and Taxation Code it is Incumbent upon a taxpayer to concede the accuracy of a federal adjustment or state wherein It is erroneous. Although appellants have not expressly conceded the accuracy of the federal change, neither have they established that it was erroneous. We therefore accept the Franchise Tax Board's determination insofar as it followed the federal determination for the same years-, 1957 and 1958.

In support of its disallowance of 50 percent of the expenses for all four years, respondent does not contend that

these were unrelated to the ranch operation, but advances the theory that the ranch was not operated as a trade or business. A3 provided in respondent's regulations, if a. farm is operated for recreation or pleasure and not on a commercial basis, and if the expenses exceed the receipts, the receipts arc not taken Into taxable income and, correspondingly, all of the expenses are treated a3 nondeductible items. (Cal. Admin. Code,tit. 1.8, reg. 17202(1).)

The respondent cites Thacher v. Lowe, 288 F. 994, and Deering v. Blair, 23 F.2d 975, for the point that tile existence of expenses which greatly exceed income is an important factor Indicating that the farm was not run for the purpose of profit. In those cases the taxpayers used their farms as residences and the expenses could reasonably be attributed directly to their personal enjoyment. Such circumstance3 are not present here.

Rcspondcnt also contends that the ranch operations have not been shown to be as large and as organized and efficient a3 they should be, and, therefore, the appellants could not have expected to make a profit. However, in the face of appellants' explanation that the drought forced them to curtail activities, the respondent 's assumption that the farm was insufficiently capitalized, organized or supervised cannot lead to the conclusion that the farm was not a trade or business.

The ranch was profitable in earlier years and nothing *in* the record shows that the ranch was used by the appellants as a source of personal pleasure, recreation, or leisure, or that it was suitable for such a use. Under the circumstances or this case, the fact that large losses were incurred for an extended period doe3 not justify a conclusion that the ranch was operated for pleasure rather than profit. (James Clark, et al., Executors, 24 B.T.A. 1235; Dean Babbitt, 23 T.C.850; J. Clark Wise, T.C. Memo., Dkt. No. 55815, May 23, 1957, aff'd, 260 F.2d 354; Harvey S. Farrow, Sr., T.C. Memo., Dkt. Nos. 59371, 65384, Sept. 30, 1957; George M. Zeagler, T.C. Memo., Dkt. Nos. 53410, 55075, May 23, 1958; Theron D. Stay, T.C. Memo., Dkt. Nos. 65355, 66609, Sept. 19, 1958.)

O R D E R

Pursuant to the views expressed in the opinion of the board *on* file in this proceeding, and good cause appearing thcrefor,

Appeal of Albion W. and Virginia B. Spear

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 19060 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claims of Albion W. and Virginia B. Spear for refund of personal income tax in the amounts of $212.75 and $322.15 plus interest paid by appellants in the amounts of $68.72 and $84.72 for the years 1955 and 1956, respectively, be and the same is hereby reversed, and that the denial of claims for refund of personal income tax in the amounts of $336.49 and $282.10 plus interest paid by appellants in the amounts of $68.31 and $40.34 for the years 1957 and 1958, respectively, be and the same is hereby sustained.

Done at Pasadena, California, this 20th day of April, 1964, by the State Board of Equalization.

_____, Chairman

_____, Member

_____, Member

_____, Member

_____, Member

Attest: _____, Secretary